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September 13, 2022

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On behalf of the Washington State Medical Association, representing more than 12,000 physicians and physician assistants across the state, as well as our undersigned physician partner organizations, thank you for your work to implement House Bill 1688 from the 2022 legislative session and the opportunity to provide comment on the second prepublication draft rule R 2022-02.

As you know, our primary interest in the implementation of HB 1688 is that the ensuing rule preserves existing incentives to contract for all parties so that voluntary contracting remains the “norm” in our state. In the context of the negotiations and agreement that was reached on HB 1688 during the 2022 session, the key provision at issue was the utilization of AADR’s in the balance billing setting.

Specifically for AADR’s utilized for balance billing services, reimbursement should be explicitly required to be at billed charges for the initial three month period. This aligns with the agreement reached on the bill, preserving incentives for insurance carriers to contract with physician groups and ensuring that AADR’s are used infrequently.

We restate the following from our comment letter on the first prepublication draft rule:

Throughout the discussions on HB 1688 during the 2022 legislative session, it was repeatedly noted by the OIC that a carrier would be required to reimburse a provider party to an AADR at the provider’s billed charges. This tracks with [WAC 284-170-210](#), but the law does not explicitly require carriers to reimburse at billed charges, instead directing that AADR’s “may result” in payment at billed charges.

In the interest of incenting carriers to negotiate with providers potentially subject to an AADR, requiring carriers to reimburse providers at billed charges for three months was a central piece of the negotiations on Section 18 of HB 1688. This maintains an equilibrium of incentives where carriers want to avoid paying billed charges and physicians want to avoid being locked into an arbitrated rate for the remainder of the year, forwarding the shared goal that voluntary contracting remain the expectation and norm.

To ensure this equilibrium it must be specified that for those AADR's that include services covered by the BBPA, carriers are explicitly required to reimburse at billed charges for the three-month period that precedes the ability to petition for arbitration to establish a commercially reasonable payment rate for the duration of the AADR. We see this as a critical component of ensuring the compromise that was reached on HB 1688 is reflected in practice on the part of entities who will be entering into AADR's.

To reflect the compromise reached on HB 1688, language should be added to proposed WAC 284-170-220 on page 88 of the prepublication draft rule as follows:

(b) The amended alternate access delivery request must include attestation from the issuer of reimbursing the provider at billed charges for the 3 months after the effective date of the alternate access delivery request approval by the commissioner.

Thank you for your consideration. We look forward to continuing to work together on the implementation of the law and we welcome knowing if there is additional information we can provide.

Sincerely,

Sean Graham
Director of Government Affairs
Washington State Medical Association

Washington Chapter – American College of Emergency Physicians
Washington State Society of Anesthesiologists
Washington State Society of Pathologists
Washington State Society of Radiologists
Emergency Department Practice Management Association
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